

UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA

Jotham R. Simmons,

Petitioner,

vs.

Warden Antonelli,

Respondent.

C/A No. 5:17-cv-03019-RBH

ORDER

This case is before the court because of Petitioner's failure to comply with the magistrate judge's Order of December 8, 2017. ECF No. 7.

A review of the record indicates that the magistrate judge ordered Petitioner to pay the filing fee or submit a motion for leave to proceed *in forma pauperis* to render this case into proper form within twenty-one days, and specifically informed Petitioner that if he failed to do so, this case would be dismissed *without prejudice*. The court has not received any response from Petitioner and the time for his compliance has passed.

The mail in which the Order was sent to Petitioner at the address provided when the case was filed has not been returned to the court, thus it is presumed that Petitioner received the Order, but has neglected to comply with it within the time permitted under the Order.

Petitioner's lack of response to the Order indicates intent to not continue prosecuting this case and subjects this case to dismissal. *See* Fed. R. Civ. P. 41(b) (district courts may dismiss an action if a Petitioner fails to comply with "any order of the court."); *see also Choice Hotels Int'l, Inc. v. Goodwin & Boone*, 11 F.3d 469, 471-72 (4th Cir. 1993) (dismissal with prejudice appropriate where warning given); *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 920 (4th Cir.

1982) (court may dismiss *sua sponte*).

Accordingly, this case is dismissed *without prejudice*. The Clerk of Court shall close the file.<sup>1</sup>

IT IS SO ORDERED.

January 19, 2018  
Florence, South Carolina

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge

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<sup>1</sup> Under General Order, Misc. No. 3:07-5014-JFA, this dismissal *without prejudice* does *not* count as a “strike” for purposes of the “three strikes” provision of 28 U.S.C. § 1915(g). If Petitioner wishes to bring this action in the future, he should obtain new forms for doing so from the Clerk’s Office in Columbia (**901 Richland Street, Columbia, South Carolina 29201**).